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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,388	02/13/2001	Daniel Keith Tomaschko	S63.2-9711	2245

490 7590 07/11/2002

VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER
BUI, VY Q

ART UNIT	PAPER NUMBER
3731	

DATE MAILED: 07/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/781,388	TOMASCHKO ET AL.	
	Examiner	Art Unit	
	Vy Q. Bui	3731	

-- Th MAILING DATE of this communication appears on th cov r sheet with th correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 April 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *27-30 and 33-46* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *27-30 and 33-46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 27-30, 33-39, and 41-46 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over FORMAN (5,733,301).

As to claims 27-28, and 45, FORMAN discloses claimed invention including a process of removing the material of the balloon by laser ablation, which can be considered as a chemical-etching process (column 4, lines 5-10). Alternately, since laser ablation of a material includes chemical breaking of bonds and disassociation of molecules of the material (column 4, lines 5-10), which cause removal of the material, it would have been obvious to one of ordinary skill in the art at the time of the invention to use laser ablation or another type of chemical-etching process to remove the material.

As to claim 29, FORMAN (Fig. 15; column 10, lines 3-8) discloses the distal waist portion having material removed so as to reduce the distal waist wall thickness and to increase maneuverability.

As to claims 30, 42 and 46, FORMAN (column 4, lines 5-10 and Fig. 7; column 8, lines 49-61) discloses claimed invention including a process of removing the material of the balloon by laser ablation, which can be considered as a chemical-etching process and balloon 16 having a body portion, (proximal and distal) cone portions, and (proximal and distal) waist portions are of a substantially equal thickness. Alternately, since laser ablation of a material includes chemical breaking of bonds and disassociation of molecules of the material (column 4, lines 5-10), which cause removal of the material, it would have been obvious to one of ordinary skill in the art at the time of the invention to use laser ablation or another type of chemical-etching process to remove the material.

As to claims 33-39, FORMAN (column 4, lines 5-10 and Fig. 7; column 8, lines 49-61) discloses claimed invention including a process of removing the material of the balloon by laser ablation, which can be considered as a chemical-etching process and balloon 16 having its distal waist wall thickness less than the thickness of its cone wall portions t2 and less than the thickness t1 of body portion as well. Alternately, since laser ablation of a material includes chemical breaking of bonds and disassociation of molecules of the material (column 4, lines 5-10), which cause removal of the material, it would have been obvious to one of ordinary skill in the art at the time of the invention to use laser ablation or another type of chemical-etching process to remove the material.

As to claim 43, FORMAN (Fig. 7; column 8, lines 45-59) discloses that the thickness of the cone portions is within (more or less than) from 10% to 25% the thickness of the body portion.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 40 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over FORMAN (5,733,301) in view of MAREIRO et al (6,258,099).

As to claims 40 and 44, FORMAN discloses claimed invention including a process of removing the material of the balloon by a laser ablation including a photo-chemical process. FORMAN does not disclose a process of removing a material from a balloon section by grinding. Grinding and chemical etching are well-known processes for accurately removing material from a body. For example, MAREIRO (column 5, lines 42-46) discloses equivalent techniques for removal the material of a balloon such as grinding, etching. Since grinding and etching are common method to remove material from a balloon, it would have been obvious to one having ordinary skill in the art at the time the invention was made to remove the material from a portion of the FORMAN's balloon by either grinding or chemical etching process as these processes are well-known for accurately removing a material from a body.

Response to Arguments

Applicant's arguments filed 4/26/2002 have been fully considered but they are not persuasive.

As to claim 30, the attorney contends that FORMAN balloon does not have a constant wall thickness over substantially the entire length of the balloon when inflated. However, as disclosed by Figs. 6-7 and column 4, lines 20-27, the FORMAN balloon is indeed inflated before laser cutting so as to make the balloon to have a desired wall thickness in the inflated or working condition.

The amendment has not clearly defined the present invention over the FORMAN reference, and a second rejection (based on the same reference (FORMAN) as the first rejection) is presented as above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is (703) 306-3420.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano, can be reached at (703) 308-2496. The fax number for this Unit is (703) 308-2708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist at (703) 308-0858

VQB
July 2, 2002.

MICHAEL J. MILANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700